IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 265 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKHILESH @ MUKESH AGRAWAL @ SANJAYSINH @ RAJU TIWARI - Appellant
Versus
STATE OF GUJARAT & 1 - Respondent

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Appearance :
MR YOGESH S LAKHANI for Appellant
MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. By instant appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short), the appellant/original accused No.2 ('the accused' for short) challenges the correctness and legality of the judgment and order dated 31.12.2003, rendered in Sessions Case No.77 of 2001 by the learned Additional Sessions Judge, Court No.6, City Sessions Court, Ahmedabad, by which the accused has been convicted for commission of the offenecs punishable under Sections 120B, 364A, 387 read with Section 120B and 511 of the Indian Penal Code ('IPC' for short) and Sections 25 (1) (a), 25 (1) (b) and 27 of the Arms Act, 1959 and sentenced to suffer R.I. for four months and fine of Rs.1,000/- i.d., thereof, RI for further period of 15 days for commission of offence punishable under Section 120B IPC, RI for ten years and fine of Rs.5,000/- i.d., thereof RI for further period of three months for commission of the offence punishable under Section 364A read with Sections 120B and 511 IPC, RI for five years and fine of Rs.1,500/-

i.d., thereof RI for further period of 1 ½ months for commission of the offence punishable under Section 387 read with Sections 120B and 511 IPC, RI for five years and fine of Rs.1,500/- i.d., thereof, RI for further period of 1 ½ months for commission of the offence punishable under Section 25 (1) (a) of the Arms Act, RI for three years and fine of Rs.1,000/- i.d., thereof RI for further period of one month for commission of the offence punishable under Section 25 (1) (b) of the Arms Act and RI for three years and fine of Rs.1,000/- i.d., thereof, RI for further period of one month for commission of the offence punishable under Section 27 of the Arms Act. It is also ordered that all the substantive sentences imposed on the accused shall run concurrently.

2. At the outset, be it noted that Fazlu-Ur-Raheman alias Fazlu alias Sing alias Mona alias Tanvir alias Doctor Abdul Basitali, originally belonged to Darbhanga, Bihar and at present at

Dubai, Arabstan hatched the conspiracy to kidnap for ransom but he could not be arrested and, therefore, six accused persons who were arrested came to be charge-sheeted and prosecution was launched against them, and were charged for commission of the offences punishable under Sections 364A, 387, 120B and 511 IPC and also under Sections 25 (1) (a), 25 (1) (b) and 27 of the Arms Act. During the course of the trial, accused No.6 has died, therefore, prosecution launched against him came to be abated. Since there is no evidence against accused Nos.4 and 5, they came to be acquitted. Accused No.3 absconded during trial. Therefore, the trial court has ordered to keep the case pending against Fazlu Raheman who has not been arrested till today and accused No.3 who has been absconded during trial, till they are arrested.

3. The prosecution case as disclosed from the FIR and unfolded during trial, is as under:

3.1. P.W.1, Pradip S. Mehta, a resident of 16, Jay Bungalows, Amavasyam Society, Opp. Lav-kush Society, Ring Road, Satellite, Ahmedabad, doing business of export and import in the name and style of Vishal Export Overseas Limited, Toran Dinning Hall Street, Opp. Sales India, Navrangpura, Ahmedabad, lodged FIR with DCB Police Commissioner, Ahmedabad City, wherein it is, inter alia, stated by him that for doing business he used to come to his office in Maruti Zen Car, every day at 10 A.M. and the car was driven by driver Laxmanbhai Ahir and he remain in the office till 8.30 P.M.

3.2. On 1.5.2000 when he was in the office, he received a telephone call on his telephone No. 7543251 between 1.30 and 2 P.M. From the opposite side, a person speaking in Hindi introduced himself saying Fazlu speaking from Dubai. He asked P.W.1, how are you Pradipji. He inquired as to whether did P.W.1 know him. P.W.1 told in Hindi that he does not know him. The person from

the other side said that P.W.1 may ask Vasant Adani, the brother of Gautam Adani to know as to who is Fazlu and to give him Rs.50 lakhs. P.W.1 told him that he has nothing to do with Fazlu. On saying so Fazlu cut the telephone.

3.3. It is further case of the prosecution that again on 6.5.2000 when P.W.1 was present in the office at that time, at about 2-2.30 P.M. the telephone call came on the same telephone which P.W.1 received. The person making the telephone call said to P.W.1 in Hindi that he is Fazlu speaking and inquired "Idiot why have you not telephoned up till now" and P.W.1 said that he had gone out of State for business and so he had not telephoned. The caller threatened as to what have he thought about money. The caller informed that P.W.1 has still twenty four hours time. P.W.1 may call for as many security as he likes but he will definitely take Rs.50 lakhs from him. Fazlu also informed P.W.1 that his persons are ready and he shall get him kidnapped and killed

by firing.

3.4. It is further case of the prosecution that thereafter on 8.5.2000 when P.W.1 was in his office between 2 and 3 P.M. the telephone call came on his aforesaid telephone and he received the same. Fazlu was speaking in Hindi from the other end and threatened that P.W.1 will realize when he receive a bullet. Fazlu threatened P.W.1 saying that P.W.1 should give Rs.50 lakhs otherwise it will not be proper. His persons have reached around P.W.1 and he can do anything. If P.W.1 wants his safety, give rupees fifty lakhs to Fazlu.

3.5. It is further case of the prosecution that P.W.1 therefore personally met the Deputy Police Commissioner Surelia, crime Branch on 9.5.2000 and informed him the aforesaid facts. While informing Surelia about the said facts, it came to the knowledge of P.W.1 that Fazlu Raheman has also given threat to other rich businessmen

and industrialists of Ahmedabad, named Jayant Somabhai Patel of Tea Merchant C Somabhai, (2) The proprietor of Unjha Pharmacy, (3) Piyush Desai of Gujarat Tea traders and (4) Jagdishbhai Patel of Sarvottam Sugar. Fazlu Raheman had also demanded ransom from them. Therefore, PW 1 was asked by Surelia to go to crime Branch. P.W.1 therefore appraised about the said incident to crime branch. The crime branch therefore arranged police personnels to keep a secret watch for the safety of P.W.1.

3.6. As per further case of the prosecution P.W.1 went out of station for business purposes on 13.5.2005 and thereafter he went to his in-laws at Botad. At that time Fazlu Raheman telephoned at his office between 1.45 and 2 P.M which was attended by Dipakbhai, the younger brother of P.W.1. Dipakbhai thereafter telephoned to P.W.1 at his in-laws and informed that there was a phone call from Fazlu Raheman and Fazlu Raheman asked for how many days he would remain

away? Close the matter otherwise he will realize on receiving a bullet. Dipakbhai informed P.W.1 about these threats and P.W.1 conveyed the same to the police. The police instructed him to get in touch with them immediately and the attempts were in progress by the police. On the day of the incident the police informed the complainant that an information was received that Fazlu Raheman's persons are in Ahmedabad and so P.W.1 should be careful and he was also informed that the P.W.1 is under the close watch of the police.

3.7. It is further case of the prosecution that on the day of the incident, at about 8.30 evening when P.W.1 was about to board his car which was parked below his office, two unknown persons tried to drag him. At that time Assistant Police Commissioner Subhash Trivedi, PSI DS Goswami, PSI KS Desai and PSI RB Joshi and other team of police personnels arrived there immediately and cordoned and caught both of them and a third person standing nearby. All the said

three persons took out country made revolvers ('tamancha') kept on their waist and scuffle took place. The police personnels dashed the said three persons on the ground by using minimum force and caught them and they asked their names and addresses which are as under:

(i) Jhaur Ahmed alias Mahesh Agrawal, son of Mashrud Ahmed Pathan, residing at Room No.4, Lane No.5, Bahadurganj, Taluka Bahadurganj, District Shahjahan, Uttarpradesh.

(ii)Akhilesh alias Mukesh Agrawal alias Ajar sing alias Raj Siward's, son of Hailing Hildebrand Siward's, residing at Motijil colony, Lucknow (U.P.)

(iii) Prashantkumar alias Raju son of Sitaram Chauhan, residing at village Kasba Kalpi Taluka Kalpi, District Nilone (UP).

3.8. As per further case of the prosecution, three tamanchas and fifteen live cartridges were found from the three persons. In sum and substance, Fazlu Raheman, demanded a big amount

of Rs.50 lakhs by giving threats of kidnapping P.W.1 and his brother Dipakbhai and witnesses. As they did not give the amount, original accused Nos.1, 2 and 3 tried to kidnap P.W.1 at 8.30 P.M. when he was about to sit in his car. The three accused persons are arrested with loaded tamanchas. At the time of arrest of the accused Nos.1 to 3, panchnama with regard to recovery of tamancha with live cartridges was drawn by P.W.14, Subhash Trivedi.

3.9. A complaint in this regard was lodged before P.W.14, Subhash Trivedi, ACP Ahmedabad City which was registered vide CR No.I-14 of 2000 at DCB Ahmedabad City Crime Branch against the accused Nos.1, 2 and 3 for commission of the offences under Sections 364A, 387, 120B, 511 IPC and 25(1)(a), 25(1)(b) and 27 of the Arms Act, which is on record at Ex.66.

3.10. Pursuant to the registration of the complaint, investigation was started by P.W.17 BR

Patel. During the course of investigation, he recorded the statement of witnesses and the police remand of the accused was obtained. He has also drawn two panchanamas Ex.83 and 85 of the finger print of the accused on the Maruti Car of the complainant in presence of Panchas.

3.11. Thereafter the investigation was handed over to P.W.18, Ashrafkhan A Chauhan, who interrogated the three accused persons with regard to involvement of other accused. During the course of interrogation, it was brought to his notice that accused Nos.4, 5 and 6 were also involved in the said scam. Therefore, he informed his superior. He thereafter inquired from Hotel Sahil, Hotel Chirag Palace, Hotel Jasraj, etc. where the accused stayed and recorded the statement of the managers of those hotels. Statement of the employees working in the office of P.W.1 were also recorded, statement of Dipakbhai, brother of P.W.1 was also recorded. He also recorded the statement of other persons of

Ahmedabad who have received such type of telephone calls from Fazlu Raheman. He also arrested the remaining three accused Nos.4, 5 and 6 and thereafter he sent the muddamal to FSL.

3.12. On receipt of the report from the FSL and as sufficient incriminating evidence was found against all the accused, he filed charge sheet against all the accused for commission of the offences punishable under sections 120B, 364A, 387 read with 120B and 511 IPC and also under Sections 25 (1) (a), 25 (1) (b) and 27 of the Arms Act before the Metropolitan Magistrate (Court No.11), Ahmedabad.

3.13. As the offences with which the accused were charged are exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the City Sessions Court, Ahmedabad.

3.14. On committal, the learned Additional

Sessions Judge (Court No.6), City Sessions Court, Ahmedabad, to whom the case was made over for trial, framed charge against all the accused for commission of the offences under sections 120B, 364A, 387 read with 120B and 511 IPC and also under Section 25(1) (a), 25 (1) (b) and 27 of the Arms Act. The charge was read over and explained to them. As the accused persons pleaded not guilty to the charge and claimed to be tried, they were tried in Sessions Case No.77 of 2001.

3.15. To prove the culpability of the accused, the prosecution has examined in all 18 witnesses and relied upon their oral testimonies, the details of which are as under:

P.W. No.	Name	Status	Ex. No.	Page Nos.
1	Pradip S Mehta	Complainant	65	153-190
2	Jayantbhai S Patel	Owner of Somabhai Tea Company	70	191-210
3	Govindbhai H Patel	Panch of Car	82	211-220

P.W. No.	Name	Status	Ex. No.	Page Nos.
4	Narendrabhai B Kahar	Panch of car	84	221-224
5	Kanaiyalal J Auditya	Panch	86	225-226
6	Jagdishbhai S Patel	Proprietor, Jagdishchandra and company – Dealer in sugar	92	227-236
7	Kiranbhai B Shah	Owner of Laxmi Telcom. Near Jasraj Hotel	100	237-240
8	Mehul S Gupta	Owner of Mukesh Telecom. Near Jasraj Hotel	101	241-244
9	Dipakbhai P Gangnani	Estate Broker	102	245-248
10	Kalubbhai S Desai	PSI Crime Branch, Ahmedabad City, Member of raiding party	109	249-288
11	Devendragiri H Goswami	PSI Crime Branch, Ahmedabad City, Member of raiding party	117	289-310
12	Darshan C Shah	Panch – recovery of weapons	133	311-316
13	Maheshbhai H Dave	Finger Print Expert	135	317-336

P.W. No.	Name	Status	Ex. No.	Page Nos.
14	Subhashbhai G Trivedi	ACP Crime Branch Ahmedabad City, Member of the raiding party	148	337-362
15	Rameshkumar B Joshi	PSI Crime Branch Ahmedabad City, Member of raiding party	166	363-382
16	Hasmukhbhai K Parmar	Panch of Panchnama of the office of Vag-Bakri Tea	168	383-386
17	Bhupendrakumar R Patel,	PI Crime Branch Ahmedabad City, Investigating Officer who conducted investigation till 17.5.2000	173	387-396
18	Ashrafkhan A Chauhan	PI Crime Branch Ahmedabad City, Investigating Officer who conducted investigation from 18.5.2000	180	397-412

3.16. To prove the charge levelled against the accused persons, the prosecution has also produced number of documents and relied upon the contents of the same such as, complaint, panchnama of the recovery of tamancha and cartridges from the accused, panchnama of the motor car as well as scene of offence, opinion of finger print expert, panchnama of the office of Karsanbhai Patel of Nirma and FSL report, the relevance of which for deciding the case will be discussed at the appropriate time hereinafter in this judgment.

3.17. After recording the evidence of the prosecution, the trial court explained to the accused persons the circumstances appearing against them in the evidence of the prosecution and recorded their further statement under Section 313 of the Code. The accused persons denied the case of the prosecution in toto and reiterated that they are innocent and false case

has been filed against them. In further statement of the accused, A-2 has stated that on 14.5.2000 he was staying at Hotel Jasraj from where he was illegally arrested and taken into custody. The police had beaten him. No tamancha was recovered from him. He did not know Fazlu Raheman. He has filed a complaint for beating against the police before the Magistrate when he was produced before the Magistrate and therefore he was sent by the Magistrate for treatment. False case has been filed against him. He has no connection with the incident. However, he did not produce any evidence nor did he examine any witness in support of his defence.

3.18. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court held that so far as original accused Nos.4 and 5 are concerned, the prosecution has failed to prove the charge levelled against them and therefore they came to be acquitted. So far as original accused Nos.1 and 2 are concerned, the

trial court observed that there is ample and voluminous evidence that they and accused No.3 who has absconded during trial hatched the criminal conspiracy with Fazlu Raheman for collecting ransom tried to kidnap P.W.1 with a view to get ransom of Rs.50 lakhs on 15.5.2000 when P.W.1 was about to sit in the car and in the trap arranged by the police department all the three were caught red-handed by the police officers with tamancha. Therefore, the charge against them that they have given threat of kidnapping P.W.1 with a view to collect ransom of Rs.50 lakhs is established and the prosecution has also established the charge against them for trying to kidnap P.W.1 and also for threatening to cause death or hurt to him in order to commit extortion and to collect ransom from him. Therefore complicity of accused Nos.1 and 2 is established and in doing so they also tried to attack with tamancha. Therefore, complicity of the accused for commission of the offences as per the charge levelled against them has been duly

proved. The trial court therefore held them guilty for the said charges and convicted accused Nos.1 and 2 for commission of the offenecs punishable under Sections 120B, 364A, 387 read with 120B, 511 IPC and 25(1)(a), 25 (1)(b) and 27 of the Arms Act and sentenced them to suffer RI to which reference is made in earlier paragraphs of this judgment, giving rise to this appeal at the instance of the original accused No.2. The trial Court also ordered to keep the case pending against Fazlu Raheman who has not been arrested till today and accused No.3 who has been absconded during trial, till they are arrested.

4. So far as A-1 is concerned, it is stated at the bar by Mr. KT Dave, learned APP for the respondent State of Gujarat that he has not chosen to file any appeal against the conviction and sentence passed against him. The said fact he has verified from the jailer, Ahmedabad Central Jail, who has recorded statement of accused No.1

who is languishing in Ahmedabad Central Jail. He has also produced a statement of accused No.1 for perusal of this Court which has been taken on record of the case. Besides this, this Court has also called the information from the registry. The registry has also confirmed the said fact that A-1 has not filed any appeal against the order of conviction and sentence recorded against him before this Court. Mr. KT Dave has also stated that no appeal is filed against accused Nos.4 and 5 who have been acquitted of the offences with which they were charged. Therefore, this Court has examined the case against accused No.2 only.

5. Mr. YS Lakhani, learned advocate for the accused, has contended that the complaint was registered at 22.30 hours by the PSO whereas panchnama Ex.150 was started at 22.15 hours wherein Crime register number of the complaint was mentioned by the Assistant Commissioner of Police. Thus the mentioning of the CR No. in the

panchnama which was prepared prior to registration of the offence, speaks a lot about foul play on the part of the police officers, whereby the accused was falsely roped in the commission of serious offences and speaks about the dishonest investigation made by DCB and they have falsely implicated the accused in the case. It is also highlighted by him that it is the case of the accused from the beginning that the accused was arrested from Hotel Jasraj on 14.5.2000 and was beaten up badly by the police officers and thereafter he was falsely implicated in the commission of the alleged offences. The said fact is specifically mentioned by him in his further statement under section 313 of th Code along with the documentary evidence in the from of medical certificate issued by Medical Officer (GMS) Ahmedabad Central Jail. The accused has also preferred a complaint against the police officers when he was produced before the Magistrate for the first time. At that time also the accused was sent for medical examination to

Civil Hospital, Ahmedabad. However, the said injury certificate issued by the civil Hospital was not provided to the accused and the said complaint against the police officers is pending in the Metropolitan Magistrate's Court. Therefore also the investigation does not appear to be bona fide. It is also asserted by him that no independent witnesses though available are examined by the prosecution. It is also pointed out by him that no statement of telephone record, though available with the investigating officer, was ever provided to the accused or produced before the trial court. Thus the oral testimony of the complainant is not corroborated by any documentary evidence, though the same, according to the police officers, was available with the investigating officer. He has also contended that no person from Jasraj Hotel is examined by the prosecution. No record of telephone calls being made is collected by the investigating officer from the telephone booth operators. It is also pointed out by him that there is nothing on

record that the accused had any connection whatsoever with Fazlu Raheman who allegedly demanded ransom from the complainant. He has also contended that the circumstances in which the finger prints are obtained from the car of the complainant are fishy and therefore the same cannot be relied upon. The complainant in his cross-examination has categorically stated that the car of the complainant was not taken into custody by the police officer. He has further stated that he did not take his car to the police station. It has been further stated by him that the car was kept open laying at his office and that it was kept there for three days whereas according to the investigating officer the said car was taken to the police station on 16.5.2000. Therefore, there is a contradiction in this regard. Lastly it is also asserted that though the fact regarding commission of cognizable offence was disclosed to the ACP as well as DCP no complaint whatsoever was registered by them, in gross violation of the provisions of the Code.

Not even an entry to that effect was made anywhere at any point of time. There is also no evidence on record that the alleged raid was conducted at any point of time. On aforesaid premises, according to Mr. Lakhani the whole case is concocted and the accused have been falsely roped in the serious crime.

5.1. On the aforesaid premises, according to him, the judgment and order of conviction and sentence for commission of the offences for which the accused was charged is contrary to the evidence on record and, therefore, the same deserves to be quashed and set aside. He therefore urged to allow the appeal and acquit the accused of the offenecs with which he was charged.

6. In counter submission, Mr. KT Dave, learned APP for the respondent State of Gujarat has submitted that there is voluminous evidence against the accused to the effect that he and accused No.1 has committed the offences

punishable under Sections 120B, 364A, 387 read with 120B and 511 IPC and 25 (1) (a), 25 (1)(b) and 27 of the Arms Act. He has also submitted that he and the accused Nos.1 and 3 were caught red handed with tamancha while they tried to kidnap the complainant and therefore there is no reason to disbelieve the evidence of P.W.1, the complainant as well as police personnels. He has also asserted that prior to the incident on three different dates on 1.5.2000, 6.5.2000 and 8.5.2000 threat was given to the complainant and on 13.2.2000 threat was also given to his brother with regard to demand of ransom of Rs.50 lakhs which has been narrated in the complaint filed by P.W.1. He has also emphasized that similar threat was given to other businessmen and industrialists of Ahmedabad such as Jayantbhai S. Patel, owner of Somabhai Tea Company and Jagdishbhai S Patel, proprietor of Jagdishchandra and Company, a dealer in sugar for ransom. P.W.2, Jayantbhai S Patel, Ex.70 and P.W.6, Jagdishbhai S. Patel, Ex.92 who have been examined have stated that

they have also received similar threats from Fazlu Raheman of Dubai. It is also emphasized by him that the evidence of police officers who were members of the raiding party is clinching with regard to the involvement of the accused in the crime as the accused as well as remaining two accused were caught red handed while they were trying to kidnap P.W.1, the complainant while he was about to board in his car at about 8.30 P.M. on 15.5.2000. According to him, the matter did not rest there. All the three persons took tamanchas from their waist and they tried to resist the police personnels but ultimately they could not succeed in resisting the police personnels and they caught them red handed. Therefore, there is no reason to disregard the evidence of the police personnels as well as the complainant and other independent witnesses from whom also ransom was demanded by Fazlu Raheman.

6.1. On the aforesaid premises, according to him, the trial court has rightly held accused Nos.1

and 2 guilty for the commission of the offences alleged against them and rightly recorded the conviction and sentence against both of them. Therefore, he submitted that there is no merit in the appeal filed by A-2 and urged to dismiss the appeal.

7. This court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with criminal appeals, this Court has examined the entire evidence on record for itself independently of the learned trial Judge and considered the arguments advanced on behalf of the accused and infirmities pressed,

scrupulously with a view to find out as to whether the trial court has rightly recorded the order of conviction and sentence.

8. In order to prove the culpability of the accused, the prosecution has examined and relied upon the oral testimony of P.W.1, Pradip S Mehta, the complainant, Ex.65, pages 153 to 190 of the paper book. He has inter alia stated that he is doing business of export and import in the name and style of Vishal Export Overseas Limited, Toran Dinning Hall Street, Opp. Sales India, Navrangpura, Ahmedabad and for that purpose he used to come to his office in Maruti Zen Car, every day at 10 A.M. and the car was being driven by driver Laxmanbhai Ahir and he remains in the office till 8.30 P.M.

8.1. He has further testified that on 1.5.2000 when he was in the office, he received a telephone call on his telephone No. 7543251 between 1.30 and 2 P.M. From the opposite side,

a person speaking in Hindi introduced himself saying Fazlu speaking from Dubai. He asked him how are you Pradipji. He inquired as to whether did he know him. He told in Hindi that he does not know him. The person from the other side said that he may ask Vasant Adani, the brother of Gautam Adani to know as to who is Fazlu and to give him Rs.50 lakhs. He told him that he has nothing to do with Fazlu. On saying so Fazlu cut the telephone.

8.2. He has further testified that again on 6.5.2000 when he was present in the office at that time, at about 2-2.30 P.M. the telephone call came on the same telephone which he received. The person making the telephone call said to him in Hindi that he is Fazlu speaking and inquired "Idiot why have you not telephoned up till now" and he said that he had gone out of State for business and so he had not telephoned. The caller threatened as to what have he thought

about money. The caller informed that he has still twenty four hours time and he may call for as many security as he likes but he will definitely take Rs.50 lakhs from him. Fazlu also informed him that his persons are ready and he shall get him kidnapped and killed by firing.

8.3. He has also testified that thereafter on 8.5.2000 when he was in his office between 2 and 3 P.M. the telephone call came on his aforesaid telephone and he received the same. Fazlu was speaking in Hindi from the other end and threatened that he will realize when he receives a bullet. Fazlu threatened him saying that he should give Rs.50 lakhs otherwise it will not be proper. His persons have reached around P.W.1 and he can do anything. If he wants his safety, give rupees fifty lakhs to Fazlu.

8.4. He has also testified that he personally met the Deputy Police Commissioner Surelia,

crime Branch on 9.5.2000 and informed him the aforesaid facts. While informing Surelia about the said facts, it came to his knowledge that Fazlu Raheman has also given threat to other rich businessmen and industrialists of Ahmedabad, named Jayant Somabhai Patel of tea Merchant C Somabhai, (2) The proprietor of Unjha Pharmacy, (3) Piyush Desai of Gujarat Tea traders and (4) Jagdishbhai Patel of Sarvottam Sugar. Fazlu Raheman had also demanded ransom from them. Therefore, he was asked by Surelia to go to crime Branch. He therefore appraised about the said incident to crime branch. The crime branch therefore arranged police personnels to keep a secret watch for his safety.

8.5. He has also testified that he went out of station for business purposes on 13.5.2005 and thereafter he went to his in laws at Botad. At that time Fazlu Raheman telephoned at his office between 1.45 and 2 P.M which was attended by

Dipakbhai and thereafter his younger brother telephoned to him at his in laws and informed that there was a phone call from Fazlu Raheman and Fazlu Raheman asked for how many days he would remain away? Close the matter otherwise he will realize on receiving a bullet. Dipakbhai informed him about these threats and he conveyed the same to the police. The police instructed him to get in touch with them immediately and the attempts were in progress by the police. On the day of the incident the police informed him that an information was received that Fazlu Raheman's persons are in Ahmedabad and so he should be careful and he was also informed that he is under the close watch of the police.

8.6. He has also testified that on the day of the incident, at about 8.30 evening when he was about to board his car which was parked below his office, two unknown persons tried to drag him. At that time, Assistant Commissioner of

Police Subhash Trivedi, PSI DS Goswami, PSI KS Desai and PSI RB Joshi and other team of police personnels arrived there immediately and cordoned and caught both of them and a third person standing nearby. All the said three persons took out tamanchas kept on their waist and scuffle took place. The police personnels dashed the said three persons on the ground by using minimum force and caught them and they asked their names and addresses which are as under:

(i) Jhaur Ahmed alias Mahesh Agrawal, son of Mashrud Ahmed Pathan, residing at Room No.4, Lane No.5, Bahadurganj, Taluka Bahadurganj, District Shahjahan, Uttarpradesh.

(ii)Akhilesh alias Mukesh Agrawal alias Ajar sing alias Raj Siward's, son of Hailing Hildebrand Siward's, residing at Motijil colony, Lucknow (U.P.)

(iii) Prashantkumar alias Raju son of Sitaram Chauhan, residing at village Kasba Kalpi Taluka Kalpi, District Nilone (UP).

8.7. He has also testified that three tamanchas and fifteen live cartridges were found from the three persons. In sum and substance, the deposition of the complainant is that Fazlu Raheman, demanded a big amount of Rs.50 lakhs by giving threats of kidnapping him and his brother Dipakbhai and witnesses. As they did not give the amount original accused Nos.1, 2 and 3 tried to kidnap him at 8.30 P.M. when he was about to sit in his car. The three accused persons are arrested with loaded tamanchas. At the time of arrest of the accused Nos.1 to 3, panchnama with regard to recovery of tamancha with live cartridges was drawn by P.W.14, Subhash Trivedi.

8.9. A complaint in this regard was lodged before P.W.14, Subhash Trivedi, ACP Ahmedabad City which was registered vide CR No.I-14 of 2000 at DCB Ahmedabad City Crime Branch against the accused Nos.1, 2 and 3 for commission of the offences under Sections 364A, 387, 120B, 511 IPC and 25(1)(a), 25(1)(b) and 27 of the Arms Act, which is on

record at Ex.66.

8.9. This witness was cross-examined at length by the learned advocate for the accused. He was put to lot many questions with regard to topography of the place where the three accused persons were caught red-handed. He was also put to suggestions that the incident in question had never taken place. He however successfully repelled all the suggestions and withstood the test of cross-examination.

8.10. A perusal of the contents of the complaint which is on record at Ex.66 lodged by P.W.1, it is seen that in the said complaint he has narrated about the demand of ransom of Rs.50 lakhs by Fazlu Raheman of Dubai on his telephone on three occasions and on the fourth occasion demanded through his brother. The contents of the complaint Ex.66 get complete corroboration from the oral testimony of P.W.1, which we have

discussed hereinabove. There is not even A slightest contradiction in the complaint Ex.66 as well as the oral testimony of P.W.1, which is on record at Ex.65 and both corroborate each other.

8.11. it may be noted that on threadbare reappreciation of the entire testimony of this witness, according to this court, there is nothing on record which would impeach his credibility.

9. The prosecution has thereafter examined and relied upon the oral testimony of P.W.2 Jayantbhai S. Patel, owner of Somabhai Tea Company, Ex.70, pages 191-210 of the paper book. He has testified that he is dealing in tea business in the name and style of C Somabhai & Company. He had also received telephone calls on 2.5.2000 from Fazlu Raheman of Dubai. However, he was not in his office and therefore he could not

speak with him. Thereafter again on 4.5.2000 and 6.5.2000 he received call from Fazlu Raheman on his mobile and at that time Fazlu Raheman demanded Rs.25 lakhs from him. He has also testified that he tried to convince Fazlu Raheman that it must be a wrong number. Thereafter Fazlu Raheman told him that he wanted to talk with Jayantbhai and thereafter he threatened that if he wants to live and continue the business then he should pay Rs.25 lakhs. He has also given his mobile number to him. If he will not pay the amount of Rs.25 lakhs as ransom he would kidnap him and kill him. He therefore approached Surelia DCP Crime Branch who asked him to contact Subhash Trivedi ACP. Thereafter he met Subhash Trivedi and Subhash Trivedi told him that same threat was given to other businessmen also.

9.1. This witness was also cross-examined at length but it is not necessary for us to reproduce the entire cross-examination as

according to us it is nothing but feeble attempt is made by the learned advocate of the accused No.2 to take the reply in favour of the accused with regard to the alleged incident has not taken place but this witness has also repelled all the suggestions as well as the questions put to him. He withstood the test of cross-examination and the defence failed to bring out anything from him which would make his testimony unreliable. On the contrary, on reappreciation of his entire testimony, it inspires confidence and therefore there is no reason to disbelieve the same.

10. Thereafter the prosecution has examined P.W.6, Jagdishbhai S. Patel, Proprietor, Jagdishchandra and Company, Dealer in Sugar, Ex.92, pages 227-236 of the paper book. He has inter alia testified that he is dealing with the sugar at Madhupura market for the last twenty years. Prior to two years he was dealing in the name of Jagdishchandra and Company. At the time

of recording his evidence he was doing business as Commission agent in the name and style of Sarvottam Sugar. He has also testified that he was called on 24.5.2000 by P.W.18, A.A. Chauhan, investigating officer at Gaekwad Haveli Police Station. He has testified that prior to one month he received a phone call from Dubai at his Madhupura Market office and the call was from Fazlu Raheman of Dubai. He demanded Rs.2 crores from him. Therefore he asked him on what account he should given the money. Thereupon Fazlu Raheman told him that he has received sopari of two crores. He therefore said that he is a very small businessman and again Fazlu Raheman insisted that he should pay Rs.2 crores otherwise he would be kidnapped. Therefore he contacted Surelia DCP and Surelia told him that he should not be frightened as similar phone calls were also received by other businessmen of Ahmedabad and police would give him protection and they are keeping watch. He has also received on the next day another phone call whether he has kept ready

Rs.2 crores. Thereafter Fazlu Raheman asked him to pay Rs.1 crore instead of Rs.2 crores. Thereupon he told that it is also not possible for him to satisfy the demand of Rs.1 crore and thereafter Fazlu Raheman asked him to call him back after sometime and he also gave mobile number. Thereafter again similar call was received by him. At that time he told that he cannot manage. Thereafter Fazlu Raheman told him that his man has already reached near him and therefore he should arrange at any cost. Thereafter he has not received any call. Thereafter he received the news that three persons were caught when they tried to kidnap for ransom Pradip Mehta.

10.1. This witness was also cross-examined at length by the learned advocate for the accused but nothing substantial has been brought out so as to impeach his credibility.

11. The prosecution has thereafter examined and relied upon the evidence of P.W.7, Kiranbhai B Shah, owner of Laxmi Telecom, Near Hotel Jasraj, Ex.100, pages 237-240 of the papers book. He has inter alia testified that he is having STD/PCO in the name and style of Laxmi Telecom, near Punjab National Bank,Delhi Darwaja. He has testified that on seeing the record that on 14.5.2000 from his STD PCO telephones were made on the numbers given by Chauhan. Similar is the evidence of P.W.8, Mehul S.Gupta, owner of Mukesh Telecom, near Hotel Jasraj, Ex.101, pages 241-244 of the paper book. He is having his STD PCO at Shahibaug.

12. The prosecution has thereafter examined and relied upon the evidence of P.W.9, Dipakbhai P. Gangnani, an Estate Broker, Ex.102, pages 245-248 of the paper book. He has, inter alia, testified that he is staying in Matangi Flats, Kankaria. He is a broker in real estate. He has testified that

two persons came to him for hiring a house. He therefore asked them to give two guarantors. They were talking in Hindi language. They have given their names Mahesh Agrawal and Rakesh Sharma. He has testified that after 15 days he received a call from crime branch and when he reached at Crime Branch Office, there the said two persons were found. He has identified both of them. Both of them had come to him for hiring the house. He has also identified both of them in the Court.

13. The prosecution has thereafter examined P.W.10, Kalubhai S. Desai, PSI, Crime Branch, Ex.109, pages 249-288 of the paper book. He has testified that he was PSI at City Crime Branch at the relevant time. He has also testified that he was instructed by Subhash Trivedi to keep watch and give security to P.W.1, Pradip S Mehta, P.W.2, Jayantbhai S. Patel and P.W.6, Jagdishbhai S Patel and other businessmen who received threatening calls from Fazlu Raheman with regard

to ransom failing which they would be kidnapped. He accordingly arranged security to those persons. He was also present in the arrangement made by Subhash Trivedi for security of the businessmen.

14. The prosecution has thereafter examined and relied upon the testimony of P.W.11, DH Goswami, PSI Crime Branch,Ex.117, pages 289-310 of the paper book. He was called on 12.5.2000 by Subhash Trivedi and his evidence is on the similar line as that of the evidence of P.W.10, Kalubhai S Desai and therefore it is not necessary for us to repeat the same. He was also a member of the raiding party.

15. The prosecution thereafter has examined and relied upon the testimony of P.W.14, Subhash G. Trivedi, ACP Crime Branch, Ahmedabad City, Ex.148, pages 337-362 of the paper book. He has testified that at the relevant time he was

working as Assistant Commissioner of Police, Ahmedabad City Crime Branch in the year 2000. During his tenure he has received information from different businessmen as well as industrialists with regard to demand of ransom from Fazlu Raheman of Dubai. He has testified that P.W.1, Pradip S Mehta had also contacted him in this regard. He has also testified that P.W.1 Pradip Mehta has narrated about the phone call received by him on different dates. Therefore he has arranged for the trap with the assistance of other police officers and in the said trap, accused Nos.1 to 3 were caught hold when they were trying to kidnap P.W.1 Pradip S. Mehta while he was trying to occupy seat in his car which was parked near his office and in the said incidence scuffle took place and A-1 to 3 have taken out tamancha and resisted the police personnels but since A-1 to 3 could not succeed in resisting the police personnels they were caught red handed. He has also identified the accused Nos.1 and 2 in the court.

15.1. He was also cross-examined at length by the learned advocate for the accused. He withstood the test of cross-examination. He has repelled all the suggestions put to him with regard to non-happening of the incidence and the incidence is fabricated and also accused Nos.1 to 3 were caught from Jasraj hotel and thereafter false complaint has been filed against them.

15.2. On threadbare reappraisal of the evidence of this witness according to us the oral testimony of this witness is of sterling quality and there is no reason to discard the same and on the contrary it inspires confidence.

16. The prosecution has thereafter examined and relied upon the evidence of P.W.15, Rameshkumar B. Joshi, PSI Crime Branch, Ex.166, pages 363-382 of the paper book. He was a member of the raiding party. His evidence is also on the similar line.

He was serving as PI at Crime Branch, Ahmedabad. He was in the squad of ACP Subhash Trivedi and PI Tarun Barot. He was called by P.W.14, Subhash Trivedi on 12.5.2000 and gave information about threat received by businessmen and industrialists of Ahmedabad City from Fazlu Raheman of Dubai in connection with the demand of ransom failing which they would be kidnapped and killed. He was also a member of the raiding party and in his presence A-1 to A-3 were caught red handed.

17. The prosecution has thereafter examined and relied upon the evidence of P.W.17, Bhupendrakumar R. Patel, PI Crime Branch and investigating officer, Ex.173, pages 387 to 396 of the paper book and P.W.18, Ashrafkhan A. Chauhan, PI Crime Branch, who is also the investigating officer,Ex.180, pages 397-412 of the paper book. Both of them have also testified about the role played by them. They have recorded statement of the witnesses and during the course

of investigation since evidence was also found against remaining accused, P.W.18, AA Chauhan arrested accused Nos.4, 5 and 6 and filed charge-sheet against all the six accused persons.

18. The prosecution has thereafter examined the panchas of various panchnamas. The panch witnesses are (i) P.W.3, Govindbhai H Patel, Ex.82, pages 211-220 of the paper book, (ii) P.W.4, Narendrabhai B Kahar, Ex.84, pages 221-224 of the paper book, (iii) P.W.5, Kanaiyalal J. Auditya, Ex.86, pages 225-226 of the paper book and P.W.16, Hasmukhbhai K. Parmar, Ex.168, pages 383-386 of the paper book. In their presence various panchnamas have been drawn. They also testified as per the narration given by them in the panchnama and all the panchas have been proved by their testimonies.

19. On overall reappraisal of the oral testimonies on record, according to this court,

there is ample evidence on record to the effect that P.W.1, Pradip S Mehta received four telephone calls from Fazlu Raheman of Dubai with regard to demand of ransom of Rs.50 lakhs from him failing which he has to be prepared for dire consequences. He therefore informed the said fact to Surelia DCP who in turn told him to contact P.W.14, Subhash Trivedi ACP and thereafter he met P.W.14, Subhash Trivedi who gave assurance and told that arrangement will be made for his security and he will be under their watch. P.W.14, Subhash Trivedi also told the complainant that similar phone calls were received by other four businessmen and industrialists of Ahmedabad City and accordingly P.W.14, Subhash Trivedi arranged for his security. On the day of the incident i.e., 15.5.2000 at about 8.30 P.M. when the complainant was going to occupy seat in his car which was parked near his office, the accused Nos.1 to 3 tried to kidnap him and at that time the police personnels who were in the raid with P.W.14, Subhash Trivedi caught hold of them and

the accused tried to resist the police but they could not succeed and therefore A-1 to A-3 were caught and arrested. Thus the accused Nos.1 to 3 were caught by the police personnels who were keeping watch over the complainant under the instructions of Subhash Trivedi ACP, when they were trying to kidnap Pradipbhai S Mehta and they were arrested and taken to police station. Tamancha were recovered from them. Panchnama was also prepared on the spot.

20. According to us, the evidence of P.W.1, Pradip Mehta is so clinching and raises no doubt about the demand of ransom by Fazlu Raheman of Dubai and in that connection A-1 to A-3 tried to kidnap him as P.W.1 has not paid the amount of ransom of Rs.50 lakhs as per the demand made by Fazlu Raheman and at that time all the accused Nos.1 to 3 were caught red handed.

21. The evidence of P.W.2, Jayantbhai S Patel,

Ex.70 and evidence of P.W.6, Jagdishbhai S. Patel, Ex.92 also supports the demand of ransom by Fazlu Raheman of Dubai from them.

21.1. There is evidence that P.W.14, Subhash Trivedi, was contacted by P.W.1, Pradipbhai Mehta and P.W.2, Jayantbhai S Patel, P.W.6, Jagdishbhai S. Patel as well as other two businessmen of Ahmedabad who have narrated about the demand made of ransom by Fazlu Raheman of Dubai.

21.2. P.W.14 Subhash Trivedi has in his testimony stated similar version with regard to the information conveyed to him by all of them from whom Fazlu Raheman had demanded ransom. P.W.14, therefore kept secret watch and arranged trap to catch the persons of Fazlu Raheman who were in the city at the relevant time at Ahmedabad and he arranged the raid and in the raid he caught accused Nos.1 to 3, therefore, the

evidence of these witnesses corroborates each other which does not leave any room to create doubt about the oral testimony of these witnesses and with regard to this incident.

22. The contention that complaint Ex.66 was lodged at 22.30 hours whereas the panchnama Ex.150 was drawn at 22.15 hours and therefore the panchnama was drawn prior to commission of the offence speaks about the dishonest investigation has no substance. A perusal of the complaint Ex.66, it is true that the complaint was registered at 22.30 hours. But prior to that the panchnama Ex.150 was drawn at 22.15 hours. As per the prosecution case the complaint was taken from P.W.1 after the accused Nos.1 to 3 were caught and thereafter panchnama was drawn. Naturally therefore the panchnama Ex.150 would be prior in point of time because after drawing the panchnama, along with the complaint the panchnama was also sent for registering the complaint.

Therefore it cannot be said that the investigation was dishonest. Therefore the said contention is devoid of any merit and deserves to be rejected and accordingly it is rejected.

23. The contention that accused has in his further statement under section 313 of the Code has stated that he has been arrested from Hotel Jasraj on 14.5.2000 and was also beaten up badly by the police officers and thereafter he was falsely implicated in the commission of the alleged offences has also no substance.

23.1. It is a bald statement made by the accused that he was caught from Hotel Jasraj on 14.5.2000 by the police. However he could not probabilise this defence by any evidence.

24. The contention that no independent witnesses though available are examined by the prosecution and therefore the prosecution case cannot be

relied upon has also no substance. According to this court, in such type of cases independent witnesses are normally not available and only the person who receives the demand or threat of ransom call would be the witness and the prosecution has examined the said persons. In this connection there is evidence of P.W.2 Jayantbhai S Patel and P.W.6, Jagdishbhai S. Patel from whom also Fazlu Raheman had demanded ransom failing which to prepare for dire consequence. Therefore their evidence also corroborates the evidence of P.W.1.

25. The contention that no person from Jasraj Hotel has been examined by the prosecution also pales insignificance because the accused was arrested at the time of raid when he was trying to kidnap P.W.1. The accused in his further statement under section 313 of the Code stated that he was staying at Hotel Jasraj and he was arrested from there on 14.5.2000. By merely making bald statement in his further statement under Section 313 of the Code without probabilising the defence the same cannot be accepted and therefore it cannot be believed that he was arrested from Hotel Jasraj on 14.5.2000.

26. The contention that there is nothing on record that the accused had any connection whatsoever with Fazlu Raheman who allegedly demanded ransom from the complainant has also no substance. It has come in evidence that Fazlu Raheman had demanded ransom from P.W.1, Pradip Mehta, P.W.2, Jayantbhai s Patel and P.W.6, Jagdishbhai S. Patel and in connection with

demand of ransom A-1 to A-3 were caught hold while trying to kidnap P.W.1 and therefore the accused had connection with Fazlu Raheman and when they tried to kidnap they were arrested by the police personnels. Therefore, charge of conspiracy of the accused with Fazlu-Ur-Raheman alias Fazlu alias Sing alias Mona alias Tanvir alias Doctor Abdul Basitali, originally belonged to Darbhanga, Bihar and at present at Dubai, Arabstan is duly proved.

27. On the premises above, according to us, the trial court has not committed any illegality or infirmity in coming to the conclusion that the prosecution has established the charges levelled against the accused Nos.1 and 2 and we are in complete agreement with reasons given and the conclusions arrived at by the trial court and on the basis of the evidence on record and on the facts and circumstances of the ase, no other conclusion is possible except the one reached by the trial court convicting and sentencing

accused Nos.1 and 2.

28. In aforesaid view of the matter, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence recorded by the trial court and therefore the judgment and order of conviction and sentence passed by the trial court against the accused for commission of the offences under sections 364A, 387, 120B and 511 of IPC and under sections 25(1)(a), 25(1)(b) and 27 of the Arms Act deserves to be confirmed.

29. In the wake up of the aforesaid, we are not inclined to interfere with the judgment and order passed by the trial court convicting and sentencing the accused for commission of the offences under Sections 120B, 364A, 387 read with Sections 120B and 511 of IPC and under Sections 25(1)(a), 25(1) (b) and 27 of the Arms Act. Therefore, the appeal filed by the accused has no merits and deserves to be dismissed.

30. For the foregoing reasons, the appeal fails and accordingly it is dismissed. The judgment and order dated 31.12.2003 passed by the Additional Sessions Judge,. Court No.6, City Sessions Court, Ahmedabad in Sessions Case No.77 of 2001 convicting and sentencing the accused for commission of the offences under sections 120B, 364A, 387 read with Sections 120B and 511 of IPC and under sections 25(1)(a), 25(1)(b) and 27 of the Arms Act is confirmed and maintained.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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